

Criminal Appeal No. 1518/53 BC

Hearing held on the morning of Wednesday 27 June 2007, at the Supreme Court of Libya, at its headquarters in Tripoli.

Before: Justice Dr. SALAH MUSTAPHA AL-BURGUETI, *President of the Chamber,*

And Justices: HASSAN MUHAMMAD AHMIDA

ABDULKADER JUMAA RADHWAN

HUSSEIN OMAR SHTIWI

DR. SAAD SALEM AL-ASBALI, *Members of the Chamber,*

Attended by:

MUHAMMAD MASSOOD, *Public Defender at the Appeals Chamber's Prosecution Office,*

And ABDURRAHIM MUHAMMAD DUKALI, *Chamber Registrar*

Judgment

**In the criminal appeal no. 1518/53 of the Trial Court of Al-Ajilet's Judgment
(Appeals Chamber, Misdemeanors and Minor Offences) of 29 May 2006,**

After examination of filings, reading the case summary, hearing the oral argument, the opinion of the appeals' prosecution office, and legal deliberation.

Factual background

The office of the public prosecutor at the Zuwara precinct charged on 24 July 2005 the appellant and others with:

- All defendants/using force to resist civil servants in the execution of their functions, by taking hold of victims (...), (...) and (...) and beating them at the

Katiba Masyef checkpoint, which resulted in the injuries stated in the reports enclosed in filings. The public prosecutor then referred them to a court of first instance requesting a trial pursuant to article 287 (penal). The court examined the case and sentenced them on 3 February 2006 *in presentia* to a simple 6 month term of imprisonment. In rejection of the sentence, the appellant lodged an appeal before the Trial court of Al-Ajilet (Appeals Chamber, Misdemeanors) which, having examined the case, dismissed the appeal on 29 May 2006 *in presentia* as being out of time.

This is the impugned judgment

Proceedings

The impugned judgment was rendered on 29 May 2006. On 27 July 2006, the appellant's attorney decided to appeal the judgment to have it reversed, by filing at the court's registry on the same date, using the form designed for such purpose. The grounds of appeal, signed by the attorney, were lodged before the same registry.

The appeals chamber's prosecution office filed a legal opinion, where it concluded that, while procedurally admissible, the appeal should be dismissed on the merits.

The appeal hearing was scheduled for 27 May 2007. The justice-rapporteur read out his report and listed the appeal for judgment during the day's session.

Grounds

The appeal meets the legal pre-conditions and is thus procedurally admissible.

The appellant contends that the impugned judgment misinterpreted and misapplied the law.

The court of first instance, "the Zuwara District Court", and as noted in the transcripts of its hearings, decided in the hearing of 13 November 2005 that the judgment in the case will be handed down on 1 January 2006, and the deadline for

pronouncing the judgment was subsequently extended on a number of hearings. At the last hearing, and as stated in the transcript, after calling on the defendants, it was noted that they were not present. The court thus issued the impugned judgment on 5 February 2006. The court's record of the prosecution's motions in the last hearing show that the court allowed oral arguments anew, without so stating. Hence, the impugned judgment was not issued *in presentia*, nor was it notified to the appellant. His appeal is therefore timely.

The appellant's grounds for appealing the judgment are erroneous. It is established that, for a judgment to be deemed *in presentia*, the defendant must have attended the hearing where the trial took place and must have been given a chance to defend himself, thus rendering article 212 (procedures) inapplicable. A judgment is deemed *de jure in presentia* if the defendant missed only the hearings when the case was listed for judgment. In the light of the above, and given that the transcripts of first-instance hearings show that the case was listed for judgment on 1 January 2006, with subsequent deferrals up to the judgment of 5 February 2006, that the defendant was present at the hearing when the judgment was listed, and that he pleaded guilty to the charges, his challenge is as such legally unsound, and hence should be dismissed.

For the foregoing reasons

The court rules that, while procedurally admissible, the appeal is dismissed on the merits.